



RECENT CHANGES IN FEDERAL REVERSE MORTGAGE REGULATIONS

By: Michelle Kirby, Associate Analyst

CHANGES IN FEDERAL REVERSE MORTGAGE REGULATIONS

- A "reverse mortgage" allows elderly homeowners to convert home equity into liquid assets.
- The U.S. District Court, District of Columbia, recently held that the federal reverse mortgage regulation as applied to a deceased mortgagor's non-borrowing spouse is invalid.
- The Department of Housing and Urban Development (HUD) subsequently amended the regulations to prevent, under specified conditions, the displacement of a surviving non-borrowing spouse.
- The regulatory changes apply prospectively to cases issued on or after August 4, 2014.

ISSUE

You asked for a summary of a recent federal court case involving reverse mortgages and the subsequent regulation changes.

SUMMARY

A "reverse mortgage," also known as a "home equity conversion mortgage," allows elderly homeowners to convert accumulated home equity into liquid assets. The loans are generally (1) paid to the borrower monthly and (2) repaid upon death or when the home is sold or vacated. For more general information about reverse mortgages please see OLR Reports [2012-R-0277](#) and [2013-R-0076](#).

The U.S. District Court, District of Columbia, recently struck down federal reverse mortgage regulation that allowed the Department of Housing and Urban Development (HUD) to insure reverse mortgages that became payable in full after a mortgagor's (borrower's) death regardless of whether there is a surviving non-borrowing spouse (*Bennett v. Donovan*, 4 F.Supp.3d 5, (2013)).

After the district court's decision, HUD amended its reverse mortgage regulations to provide protections against the displacement of a surviving spouse under specified conditions. Among other things, the amendments:

1. extend the due and payable status of loans for married mortgagors;

2. establish qualifying attributes for the non-borrowing spouse (e.g., must have been the mortgagor's spouse at the time of closing); and
3. require the disclosure of the non-borrowing spouse's Social Security Number.

BENNETT V. DONOVAN

Background

The surviving spouses of reverse-mortgage borrowers, who were not listed on the reverse mortgages or on the deeds to their homes, brought action against the HUD Secretary, alleging that the regulation implementing the Federal Housing Administration's (FHA) reverse mortgage program violated its authorizing statute by failing to protect the surviving spouses from foreclosure.

Analysis

The District Court examined the text and legislative intent of the 1987 Housing and Community Development Act which authorizes HUD to promulgate regulations for the federal reverse mortgage program. Under the act, the HUD Secretary is expressly prohibited from insuring a reverse mortgage unless such mortgage provides that the homeowner's obligation to satisfy the loan is deferred until the (1) homeowner's death, (2) sale of the home, or (3) occurrence of other events specified in the reverse mortgage regulations. The act specifies that for the purpose of this requirement, the term "homeowner" includes the homeowner's spouse (12 USC § 1715z-20(j)).

At the time of the trial, the regulation required loan balances to be paid in full when the (1) mortgagor dies and (2) property is no longer the principal residence of at least one surviving mortgagor. The district court concluded that HUD failed to include statutorily required protections for non-borrowing spouses in its reverse mortgage regulations.

Holding

The district court struck down the federal reverse mortgage regulation and held that federal statute allowed HUD to insure only reverse mortgages that came due after the death of both the homeowner-mortgagor and his or her spouse regardless of whether that spouse is also a mortgagor.

FEDERAL REGULATORY CHANGES

After the District Court's ruling in *Bennett v. Donovan*, HUD issued [Mortgagee Letter 2014-07](#) which amends the reverse mortgage regulations. The amendments extend the safeguard to prevent displacement of a homeowner-mortgagor to his or

her non-borrowing spouse. The changes apply prospectively only, to cases issued on or after August 4, 2014.

The amendments establish:

1. regulatory definitions for the terms "non-borrowing spouse," "deferral period," and "principal residence;"
2. due and payable loan provisions for married mortgagors;
3. qualifying attributes for the non-borrowing spouse; and
4. deferral period requirements.

Definitions

The amendments add definitions for the terms "non-borrowing spouse," "deferral period," and "principal residence."

"Non-borrowing spouse" means the spouse of the mortgagor at the time of closing and who is not a co-borrower. The meaning of "spouse" is determined by the law of the state where the (1) spouse and mortgagor reside or (2) ceremony occurred.

"Deferral period" means the period of time following the death of the last surviving mortgagor during which the due and payable status of a reverse mortgage is further deferred. The deferral is based on the continued satisfaction of the FHA requirements for a non-borrowing spouse.

"Principal Residence" means the mortgagor's and, if applicable, non-borrowing spouse's permanent residence where the majority of the calendar year is spent. A person may have only one principal residence at any time.

Under the following conditions, the property must be considered the principal residence of a mortgagor or a non-borrowing spouse who is temporarily in a health care institution:

1. a mortgagor whose stay in the institution is 12 consecutive months or less, and
2. the non-borrowing spouse whose mortgagor spouse physically resides in the property as his or her principal residence.

During a deferral period (i.e., after the death of the mortgagor), the property must continue to be considered the principal residence of a non-borrowing spouse who is temporarily in a health care institution, if he or she (1) physically occupied the property immediately before entering the health care institution and (2) stays in the institution for no more than 12 consecutive months.

Due and Payable Status for Married Mortgagors

Under the new requirements, any reverse mortgage issued after August 4, 2014 must contain a provision deferring the due and payable status until the death of the last surviving non-borrowing spouse or until another listed event occurs. At the time of closing the mortgagor must have been married and his or her non-borrowing spouse identified.

Qualifying Attributes for the Non-Borrowing Spouse

In order for the deferral period to apply to a non-borrowing spouse, he or she must have:

1. been the spouse of the mortgagor at the time the loan closed and remained the spouse until the mortgagor's death;
2. been properly disclosed to the mortgagee (lender) when the loan originated and was specifically named as a non-borrowing spouse in the reverse mortgage documents; and
3. occupied, and continue to occupy, the property securing the reverse mortgage as his or her principal residence.

Requirements for the Deferral Period

The due and payable status will be deferred for as long as a surviving non-borrowing spouse continues to meet all the qualifying attributes stated above. Additionally, after the death of the last surviving mortgagor, the surviving non-borrowing spouse must:

1. establish, within 90 days, legal ownership or other ongoing legal right to remain in the property (e.g., executed lease and court order);
2. ensure that all the mortgagor's loan obligations continue to be satisfied; and
3. ensure that the reverse mortgage does not become due and payable for any other reason.

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